

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>IN RE: SULZER HIP PROSTHESIS</b>	)	<b>Civil Action No.: 01-CV-9000</b>
<b>AND KNEE PROSTHESIS PRODUCT</b>	)	
<b>LIABILITY LITIGATION</b>	)	<b>ALL CASES</b>
	)	
<i>This document relates to:</i>	)	<b>(MDL No. 1401)</b>
<i>Shirley Levine</i>	)	
<i>Claim Number:</i>	)	<b>Judge Kathleen M. O'Malley</b>

**NOTICE OF SPECIAL MASTER DETERMINATION**

Class Member Shirley Levine, by and through her attorney James G. O'Callahan, Esq. of the Law Firm Girardi and Keese ("Appellant"), appealed the decision of the Claims Administrator ("Appellee") in rendering a Final Determination dated July 17, 2003 on Appellant's claim for benefits from the Sulzer Settlement Trust.

Appellant appealed the decision of the Appellee, and contends that Appellee erred in his decision to award a net benefit amount of Zero Dollars (\$0.00) to Appellant.

The factual findings of this matter are as follows:

1. Appellant timely submitted an Orange Form seeking APRS benefits.
2. On December 20, 2002 Appellee issued to Appellant a letter entitled "Claims Status Notification" which informed Appellant that in order to complete her Claim she was required to furnish proof of implantation of an Affected Product as required by Question 7 of the Orange Form
3. On March 14, 2003 Appellee issued a Preliminary Determination that Appellant was not eligible for APRS benefits because she had failed to prove implantation of an Affected Product as required by Question 7 of the Orange Form.
4. In a letter dated April 25, 2003 Appellant contested the Preliminary Determination.
5. On June 16, 2003, 49 days after the deadline for doing so had passed, Appellant submitted additional medical records.
6. On July 17, 2003 Appellee issued a Final Determination that Appellant is not eligible for Settlement benefits because she failed to prove implantation of an Affected Product as required by the terms of the Settlement Agreement.

**IN RE: SULZER HIP PROSTHESIS  
AND KNEE PROSTHESIS PRODUCT  
LIABILITY LITIGATION**

Notice of Special Master Determination

Shirley Levine

Claim Number:

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After a thorough review of the appeal submitted by the Appellant and the response submitted by the Appellee, the Special Master finds as follows:

The Appellee, Claims Administrator, did not abuse his discretion in denying Appellant's request for Affected Product Revision Surgery ("APRS") benefits.

The Orange Form used to seek APRS benefits is explicit in its requirements. In addition, the Settlement Agreement is very clear as to time limitations regarding evidence submission.

Despite being notified twice of her failure to provide evidence of implantation as required by Question 7 of the Orange Form, Appellant did not submit additional evidence until 49 days after the deadline to do so had passed. Any information submitted more than 45 days after the date of the Preliminary Determination cannot be considered by either Appellee or the Special Master.

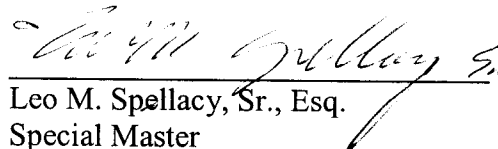
In her Notice of Appeal, Appellant states that the "operative report clearly refers to the implantation of a Sulzer hip device with Lot Number 1422622". The operative report attached as Exhibit 1 of Appellant's Notice of Appeal does not indicate that the prosthesis used was even a Sulzer product, nor is any Lot Number provided.

By order of the Special Master, Appellee's Final Determination of Zero Dollars (\$0.00) is hereby AFFIRMED.

Appellant and Appellee have fifteen days from the date of this decision to file with the Court, for the Special Master's review, a fact or principle they believe the Special Master did not consider in rendering a decision. If no response is received by November 5, 2003, then the Special Master's Decision is final and may not be further contested or appealed.

October 21, 2003

Date

  
Leo M. Spellacy, Sr., Esq.  
Special Master